

The Gazette of India



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No. 5] NEW DELHI, SATURDAY, JANUARY 31, 1953

NOTICE

The undermentioned Gazettes of India Extraordinary were published upto the 24th January 1953 :—

Issue No.	No. and date	Issued by	Subject
17	S. R. O. 154, dated the 17th January 1953.	Election Commission, India	Election Petition No. 162 of 1952.
	S. R. O. 155, dated the 17th January 1953.	Ditto.	Election Petition No. 199 of 1952.
	S. R. O. 156, dated the 17th January 1953.	Ditto	Election Petition No. 210 of 1952.
	S. R. O. 157, dated the 17th January 1953.	Ditto.	Election Petition No. 218 of 1952.
18	S. R. O. 158, dated the 1st January 1953.	Ministry of Commerce and Industry.	An order issued by the Iron and Steel Controller, Calcutta, regarding the Cancellation of Notification of the Government of India in the late Department of Supply No. SEC. 1-P3, dated the 28th June, 1945.
	S. R. O. 159, dated the 1st January 1953.	Ditto.	An order issued by the Iron and Steel Controller, Calcutta for the supersession of the previous order contained in the Ministry of Commerce and Industry's Notification No. SO(A)-4(51) II, dated the 15th September 1952.
19	S. R. O. 160, dated the 19th January 1953.	Election Commission, India	Election Case No. 1 of 1952.
	S. R. O. 161, dated the 19th January 1953.	Ditto.	Election Case No. 4 of 1952.
20	S. R. O. 162, dated the 20th January 1953.	Ministry of Finance (Revenue Division).	Cancellation of the Notification No. 26-Central Excise, dated the 19th November 1952.
21	S. R. O. 163, dated the 20th January 1953.	Election Commission, India	Election Petition No. 4 of 1952.
	S. R. O. 164, dated the 20th January 1953.	Ditto.	Election Petition No. 203 of 1952.

Issue No.	No. and date	Issued by	Subject
	S. R. O. 165, dated the 20th January 1953.	Election Commission, India	[Election Petition No. 226 of 1952.
	S. R. O. 166, dated the 20th January 1953.	Ditto.	Election Petition No. 269 of 1952.
22	S. R. O. 167, dated the 21st January 1953.	Ditto.	Election Commission designates every Tahsildar of Madhya Pradesh to hear the petition of claim or objection presented to him.
23	S. R. O. 211, dated the 22nd January 1953.	Ditto.	Certain corrections made in the Notification No. 19/134/52-Elec. III, dated the 8th January 1953.
	S. R. O. 212, dated the 22nd January 1953.	Ditto.	Election Petition No. 29 of 1953.
	S. R. O. 213, dated the 22nd January 1953.	Ditto.	Election Case No. 2 of 1952.
24	S. R. O. 214, dated the 23rd January 1953.	Ditto.	Election Petition No. 102 of 1952.
25	S. R. O. 215, dated the 23rd January 1953.	Ministry of Law.	Fixation of polling time in the Muzaffarpur North-West Constituency in the State of Bihar.

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

PART II—Section 3

Statutory Rules and Orders issued by the Ministries of the Government of India (other than the Ministry of Defence) and Central Authorities (other than the Chief Commissioners).

ELECTION COMMISSION, INDIA

New Delhi, the 20th January 1953

S.R.O. 219.—It is hereby notified for general information that the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the person whose name and address are given below, as notified under notification No. MD-P/52(50), dated the 8th May, 1952, have been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section 144 of the said Act respectively:—

Shri K. V. Ramakrishna Reddi, Advocate, Peddakadapalavandlapalli, P.O. Tanakal, Taluk Kadiri.

[No. MD-P/52(126).]

F. N. SHINGHAL, Secy.

MINISTRY OF HOME AFFAIRS

New Delhi, the 22nd January 1953

S.R.O. 220.—In exercise of the powers conferred by section 2 of the Part C States (Laws) Act, 1950 (XXX of 1950), the Central Government hereby extends

to the State of Delhi the Bombay Essential Commodities and Cattle (Control) Act, 1946 (Bombay Act XXII of 1946), as at present in force in the State of Bombay, subject to the following modifications, namely:—

Modifications

1. Throughout the Act, except as otherwise provided,—
 - (a) for the word 'Bombay' except in the short title, the word 'Delhi' shall be substituted;
 - (b) for the words 'State Government', the words 'Chief Commissioner' shall be substituted;
 - (c) the words 'or deemed to be made' shall be omitted.
2. In section 1—
 - (a) in sub-section (3) for the words and figures 'on the first day of October 1946' the words 'at once' shall be substituted;
 - (b) in sub-section (4) for the word 'eight', the word 'two' shall be substituted;
3. In section 3 the words 'State Government' shall stand unmodified.
4. To section 4, the following provisos shall be added, namely:—

"Provided that nothing in this section shall empower the Chief Commissioner to make any order relating to the production or manufacture of cement, gunnies and Twine, oil engines and tiles (Mangalore Pattern):

Provided further that if any order made by the Chief Commissioner in relation to any of the commodities specified in the preceding proviso in respect of any matter other than the production and manufacture thereof is repugnant to any order made by the Central Government under section 16 of the Industries (Development and Regulation) Act, 1951 (LXV of 1951), then, the order made by the Central Government shall prevail and the order made by the Chief Commissioner shall, to the extent of the repugnancy, be void "
5. Sections 5 and 8 shall be omitted.
6. In Schedule I—
 - (a) for item 1, the following item shall be substituted, namely:—

"1. Bricks used for building purposes,"
 - (b) for item 19, the following item shall be substituted, namely:—

"19. Lime used for building purposes "
 - (c) items 20 and 21 shall be omitted.

The text of the said Act as modified is published as an annexure to the notification.

[No. 20/12/52-Judicial,]

N. N. MALLYA, Dy. Secy.

MINISTRY OF STATES

New Delhi, the 24th January 1953

S.R.O. 221.—In pursuance of Article 239 of the Constitution the President hereby directs in amplification of the notification of the Government of India, Ministry of States No. S.R.O. 283 dated the 29th February 1952 that the powers and functions exercisable by the Lieutenant Governor of the State of Vindhya Pradesh in respect of the Bank of Baghelkhand include also the power to purchase sell, mortgage, pledge, negotiate or endorse the Government Securities held by the State Government and to borrow there against.

[No. 10-Econ./53.]

New Delhi, the 28th January 1953

S.R.O. 222.—In exercise of the powers conferred by Entry 3(b) of the Table annexed to Schedule I to the Indian Arms Rules, 1951, the Central Government is pleased to specify Sri Nitya Kishore Ju Deo, member of the family of the Ruler of Bhaibondha, for the purposes of that entry.

[No. 12-D.]

S.R.O. 223.—In exercise of the powers conferred by Entry 3(b) of the table annexed to Schedule I to the Indian Arms Rules, 1951, the Central Government is pleased to specify Sri Murl Mahohar Chaube, member of the family of the Ruler of Taraon for the purposes of that entry.

[No. 13-D.]

H. C. MAHINDROO, Under Secy.

MINISTRY OF FINANCE

(Department of Economic Affairs)

New Delhi, the 22nd January 1953

S.R.O. 224.—In exercise of the powers conferred by sub-section (2) of section 6 of the Bengal Finance (Sales Tax) Act, 1941, as extended to the State of Delhi, the Central Government hereby give notice of its intention to make with effect from 1st May, 1953, the following amendments in the Schedule to the said Act, namely:—

In the said Schedule, for Items 15 and 35 the following items shall respectively be substituted, namely:—

“15—All edible oils except hyderogenated vegetable oils.”

“35—Aviation Spirit.”

[No. F.12(16)-P/52.]

F. C. DHAUN, Under Secy.

MINISTRY OF FINANCE (REVENUE DIVISION)

HEADQUARTERS ESTABLISHMENTS

New Delhi, the 23rd January 1953

S.R.O. 225.—In pursuance of clause (b) of sub-rule (ii) of rule 2 of the Appellate Tribunal Rules, 1946, the Central Government has been pleased to appoint the following officers as Authorised Representatives to appear, plead and act for an Income-tax Authority who is party to any proceeding before the Income-tax Appellate Tribunal in respect of cases allotted to them by the Commissioners of Income-tax concerned.

1. Mr. N. Y. Tamhane.

2. Mr. S. D. Gupta.

[No. 8.]

S. P. LAHIRI, Dy. Secy.

CENTRAL BOARD OF REVENUE

INCOME-TAX

New Delhi, the 27th January 1953

S.R.O. 226.—In pursuance of sub-section (4) of Section 5 of the Indian Income-tax Act, 1922 (XI of 1922), the Central Board of Revenue directs that the following further amendments shall be made in its Notification No. 32-I.T., dated the 9th November 1946, namely:—

In the schedule appended to the said notification under the sub-head “IV—Uttar Pradesh and Vindhya Pradesh”—

(1) against Agra Range, between entries 3 and 4, the entry “3-A. Military Circle, Meerut” shall be inserted,

(2) against Allahabad Range, between entries 1 and 2, the entry “1-A. Central Circle, Allahabad” shall be inserted.

[No. 8.]

S.R.O. 227.—In pursuance of sub-section (4) of Section 5 of the Indian Income-tax Act, 1922 (XI of 1922), the Central Board of Revenue directs that the following further amendment shall be made in its Notification No. 32-I.T., dated the 9th November 1946, namely:—

In the Schedule appended to the said notification under the sub-head "VII-A—Punjab, Himachal Pradesh, Bilaspur, Patiala and East Punjab States Union" against Amritsar Range, for entry "6. Special Investigation Circle, Amritsar" the entry "6. Special Circle, Amritsar" shall be substituted.

[No. 9.]

K. B. DEB, Under Secy.

MINISTRY OF COMMERCE AND INDUSTRY

New Delhi, the 28th January 1953

S.R.O. 228.—In exercise of the powers conferred by sub-clause (a) of Clause 2 of the Iron and Steel (Control of Production and Distribution) Order, 1941, the Central Government is pleased to direct that the following amendment shall be made in the Notifications of the Government of India in the Ministry of Industry and Supply No. I(1)-4(41), dated the 7th September 1950, and No. I(1)-1(106), dated the 8th March 1948, as amended from time to time, namely:—

To the Schedule annexed to each of the said Notifications, the following entries shall be added, namely:—

"The Development Commissioner, Government of Bhopal, Bhopal.

The Secretary, Commerce and Industries Department, Government of Bhopal, Bhopal."

2. This Ministry's Notification No. SC(A)-4(77), dated the 22nd December 1952, published as S.R.O. 2094 in the *Gazette of India*, Part II, Section 3, dated the 27th December 1952, is hereby cancelled.

[No. SC(A)-4(77).]

D. HEJMADI, Under Secy.

New Delhi, the 31st January 1953

S.R.O. 229.—In exercise of the powers conferred by sub-clause (i) of Clause 5 of the Cotton Textiles (Export Control) Order, 1949, the Central Government hereby directs that the following further amendment shall be made in the notification of the Government of India, late Ministry of Commerce No. 67.CW(25A)/48, dated the 26th March, 1949, namely:—

In the said Notification, in paragraph 6, item (w) shall be deleted and items (x) and (y) shall be re-lettered as (w) and (x) respectively.

[No. 46(34)-CT(A)/52-6.]

P. GOVINDAN NAIR, Dy. Secy.

TRADE MARKS

New Delhi, the 31st January 1953

S.R.O. 230.—The following draft of certain further amendments to the Trade Marks Rules, 1942, which it is proposed to make in exercise of the powers conferred by Section 84 of the Trade Marks Act, 1940 (V of 1940), is published as required by sub-section (1) of the said section, for the information of all persons likely to be affected thereby and notice is hereby given that the draft will be taken into consideration on or after the 1st March 1953. Any objection or suggestion which may be received from any person in respect of the said draft before the date specified will be considered by the Central Government.

Draft Amendments

In the said Rules—

1. For sub-rule (3) of rule 1, the following sub-rule shall be substituted, namely:—

“(3) They extend to the whole of India except the State of Jammu and Kashmir.”

2. In rule 2, for clause (f), the following clause shall be substituted, namely:—

“(f) “Branch Registry” means a Branch of the Trade Marks Registry established under rule 141B”.

3. In rule 9, the word “British” wherever it occurs shall be omitted.

4. In rule 21, after the words “a trade mark”, the words “or a certification trade Mark” shall be inserted.

5. For rule 23, the following rule shall be substituted, namely:—

“23. *Search*.—Upon receipt of an application for the registration of a trade mark in respect of any goods the Registrar shall cause a search to be made amongst the registered trade marks and amongst the pending applications for the purpose of ascertaining whether there are on record in respect of the same goods or description of goods any marks identical with the mark sought to be registered or so nearly resembling it as to render it likely to deceive or cause confusion and the Registrar may cause a search to be renewed at any time before the acceptance of the application but shall not be bound to do so.”

6. In rule 31, the words, letters and figures “under this Act or on the Register of any Part B State to which Section 82A for the time being applies”, shall be omitted.

7. In sub-rule (1) of rule 33, for the word “further” the word “any” shall be substituted.

8. Rule 67-A shall be omitted.

9. In sub-rule (5) of rule 75, after the words and figures “rules 32 to 39”, the words “*mutatis mutandis*” shall be inserted.

10. In rule 86—

(a) after the words “The Register”, the word “and” shall be inserted;

(b) the words, letters and figures “copies of the Registers and of the Refused Textile Marks Lists of Part B States to which section 82A for the time being applies, and the list relating to trade marks deposited under Section 85”, shall be omitted.

11. In rule 86A—

(a) for the words “Registers” and “Lists”, the words “Register” and “List” shall respectively be substituted;

(b) the words, figures and letters “under this Act or under the Trade Marks Act of any Part B State to which section 82A for the time being applies” shall be omitted.

12. After rule 105, the following rule shall be inserted, namely—

“105A. *Amendment of the Refused Textile Marks List*.—An application for amendment of any entry relating to the name, address or description of the proprietor of a refused mark entered in the Refused Textile Marks List, shall be made on form TM-18. If the Registrar is satisfied that it would be just and proper to allow the amendment he may accept the application in which case the entry shall be amended accordingly.”

13. In rule 108—

(a) the words, figures and letters “copies of the Registers and of the Refused Textile Marks List of Part B States to which section 82A for the time being applies, the Lists of deposited trade marks,” shall be omitted.

- (b) for the words and letter "applications for registration pending under this Act or under the Trade Marks Act of any Part B State as aforesaid" the words "pending applications for registration" shall be substituted.

14. In rule 109, for the brackets and words "(other than a mark consisting of a word or words or letters or numerals or any combination thereof" the brackets, words and figures "(other than a trade mark to which rule 100, 101 or 102 applies)" shall be substituted.

15. In rule 113—

- (a) in clause (a), after the words "six digits" the words "not being a balanced numeral" shall be inserted;
- (b) in clause (b), after the words "six letters" the words "not being a balanced numeral" shall be inserted;
- (c) clause (g) shall be omitted;
- (d) in clause (j), after the words "different person" the words "in respect of the same goods or description of goods" shall be inserted.

16. For clause (m) of sub-rule (1) of rule 114, the following clause shall be substituted, namely:—

"(m) in the case of a combination consisting of a numeral and a fraction in at least one corresponding numeral digit."

17. In rule 115, after the words "conditions and restrictions laid down" the words, figures and letter in brackets "in clause (j) of rule 113 or" shall be inserted.

18. For clause (b) of sub-rule (1) of rule 128, the following clause shall be substituted, namely:—

"(b) 'Graduate' means a graduate of a University established by law in India, Pakistan or Burma, or of a University in Great Britain or Northern Ireland."

Explanation.—In this clause 'India' includes the State of Jammu and Kashmir.

19. In rule 130 for the words "the Dominion of India" the word "India" shall be substituted.

20. In clause (iv) of rule 131 for the words and letter "the whole of India except Part B States", the word "India" shall be substituted.

21. Rule 141A shall be omitted.

22. In the title of Part V of the Rules, for the words "the Calcutta Branch" the words "Branch Registries" shall be substituted.

23. In Part V of the Rules, the following new Rule shall be added:—

- "141B. *Branch Registry.*—The Central Government may establish one or more Branch Registries at any place in the territory to which the Act extends by notification in the official gazette."

24. For Rule 142, the following Rule shall be substituted:—

"142. *Administration of Branch Registries.*—Each Branch Registry shall be in charge of a Deputy Registrar or such other officer as the Central Government may appoint, who shall act under the control and superintendence of the Registrar".

25. In Rule 143 for the words "the Calcutta Branch", the words "a Branch Registry" shall be substituted.

26. In Rule 144,

- (a) for the words, figures and letters "Copies of the Registers and of the Refused Textile Marks Lists kept under this Act and kept by Part B States to which section 82A for the time being applies and the lists relating to trade marks deposited under section 85", the words "A copy of the Register and of the Refused Textile Marks List shall be available for inspection on payment of the prescribed fee, at such Branch Registries as have been provided with them, and at such times

on all days on which the Branch Registries are not closed to the public, as may be fixed by the Registrar”.

- (b) for the words “the Calcutta Branch”, the words “a Branch Registry” shall be substituted.

27. For Rule 145, the following Rule shall be substituted:—

“145. *Hearing at a Branch Registry.*

- (1) Where an application for the Registration of a trade mark has been made at a Branch Registry, the application shall in the event of a hearing becoming necessary and if the applicant so desires, be heard at the Branch Registry concerned.

Provided that in the event of the Registrar having to deal with more than one application at one hearing, it shall be in the discretion of the Registrar to direct the hearing of the application at the Branch Registry concerned.

- (2) Where the hearing has taken place at a Branch Registry, the decision in respect thereof shall be pronounced at the Branch Registry concerned.”

28. In the First Schedule—

- (a) in entry No. 25A, for the word and figures “Section 23”, the word and figures “section 38” shall be substituted;
- (b) in entry No. 54, after the words “For each additional registration” the brackets and words “(the registered mark and the addition or alteration thereto being the same in each case)”, shall be inserted;
- (c) in entries Nos. 60 and 61 after the words “in each class” the words “or in each item of the Fifth Schedule, as the case may be” shall be inserted;
- (d) in entry No. 65, for the words “permission to amend application”, the words “amendment of” shall be substituted;
- (e) in entry No. 68, after the words “every quarter of an hour” the words “or part thereof” shall be inserted.

29. In the Second Schedule—

(a) In the list of Forms—

- (i) in the second column of the entry relating to form TM-2, the words and figures “and rule 109” shall be inserted;
- (ii) in the third column of the entry relating to form TM-16, for the words “permission to amend application” the words “amendment of” shall be substituted;
- (iii) in the third column of the entry relating to form TM-19, for the words “British India”, the word “India” shall be substituted;
- (iv) in the entry relating to form TM-51, in the third column, for the words “in combination with numerals or letters or both” the brackets and words “(not being an invented word or invented words)” shall be substituted and in the fourth column for the figure and letter “7A” the figures, word and letter “7 and 7A” shall be substituted;
- (v) in the entry relating to form TM-52, in the fourth column, for the figure and letter “6A” the figures, word and letter “6 and 6A” shall be substituted;
- (vi) in the entry relating to form TM-53 in the fourth column, for the figure and letter “8A” the figures, word and letter “8 and 8A” shall be substituted.

(b) in the forms set forth in the Second Schedule—

- (i) in form TM-1, for the words “four others” the words “six others” shall be substituted;
- (ii) in form TM-2, after the words and brackets “(not being an invented word or invented words) or” the words “a mark consisting exclusively of” shall be inserted;
- (iii) in form TM-3, the footnote “An application made in respect of textile goods should be accompanied by six representations of the trade mark, by a Statement of case in triplicate and also by a duplicate of the application” shall be omitted;

- (iv) In form TM-5 for the words "British India", the word "India" shall be substituted and in footnote (b) the words, figures and letters "under this Act or on the Register of any Part B State to which Section 82A for the time being applies" shall be omitted;
- (v) In form TM-6, for the words "To be filed in triplicate" the words "To be filed in duplicate" shall be substituted;
- (vi) In forms TM-7 and TM-10, for the words "Calcutta Branch of the Trade Marks Registry" below the words "Trade Marks Registry", the words "Branch Registry" shall be substituted;
- (vii) In form TM-8, TM-9 and TM-10, for the words "at the Calcutta Branch of the Trade Marks Registry, Calcutta", the words "at a Branch Registry" shall be substituted;
- (viii) In form TM-11, in the marginal heading relating to fee, the figures "26" where they occur for the first time shall be omitted;
- (ix) In form TM-12, for the words "three months" in the footnote the words "six months" shall be substituted;
- (x) In form TM-16, in the heading for the words "permission to amend application", the words "amendment of" shall be substituted and for the figures and word "64 and 69" the figures, word and letter "64, 69 and 105A" shall be substituted.
- (xi) In form TM-19, for the words, "British India" in the heading and in footnote (e), the word "India", shall be substituted;
- (xii) In form TM-27, for the words "British India", the word, "India" shall be substituted;
- (xiii) In forms TM-42 and TM-43, for the words "the Calcutta Branch of the Trade Marks Registry", the words "a Branch Registry" shall be substituted.
- (xiv) In forms TM-44 and TM-45, for the words "British India", the word "India" shall be substituted.

30. In the Third Schedule, in form O-4 for the words "Department of Commerce", wherever they occur, the words "Ministry of Commerce and Industry" shall be substituted.

31. In the Fifth Schedule, in the entry relating to item LVIII, for the words "Artificial brocades" the words "Artificial silk brocades" shall be substituted.

No. 101(1)-TM&P(TM)/51.]

J. N. DUTTA, Dy. Secy.

MINISTRY OF INFORMATION AND BROADCASTING

ORDERS

New Delhi, the 27th January 1953

S.R.O. 231.—In exercise of the powers conferred by section 11 of the Cinematograph Act, 1918 (II of 1918) and section 9 of the Cinematograph Act, 1952 (XXXVII of 1952), the Central Government hereby directs that the following amendment shall be made in the notification of the Government of India in the Ministry of Information and Broadcasting No. S.R.O. 1766, dated the 13th October 1952, namely:—

"In the said notification, condition (ii) shall be omitted."

[No. 20(50)51-F(1).]

S.R.O. 233.—In exercise of the powers conferred by section 9 of the Cinematograph Act, 1952 (XXXVII of 1952), the Central Government hereby directs that the following amendment shall be made in the notification of the Government of India in the Ministry of Information and Broadcasting No. S.R.O. 1767, dated the 31st October 1952, namely:—

"In the said notification, condition (ii) shall be omitted."

[No. 20(50)51-F(

S.R.O. 233.—In exercise of the powers conferred by section 9 of the Cinematograph Act, 1952 (XXXVII of 1952), the Central Government hereby directs that the following amendment shall be made in the notification of the Government of India in the Ministry of Information and Broadcasting No. S.R.O. 1768, dated the 13th October 1952, namely:—

“In the said notification, condition (ii) shall be omitted.”

[No. 20(50)51-F(3).]

C. B. RAO, Dy. Secy.

MINISTRY OF IRRIGATION AND POWER

New Delhi, the 15th January 1953

S.R.O. 234.—In exercise of the powers conferred by sub-section (1) of section 36 of the Indian Electricity Act, 1910 (IX of 1910), and in supersession of the notifications of the Government of India in the late Ministry of Works, Mines and Power No. EL-II-207(7), dated the 3rd June, 1950, and the Ministry of Natural Resources and Scientific Research No. EL-II-207(9), dated the 16th April, 1951, the Central Government hereby appoints Shri F. C. Sarkar, Electric Inspector of Mines, Mines Department and Shri H. K. Bhattacharjee and Shri Nabaprasuna Ghosh, Junior Electric Inspectors of Mines, Mines Department, to be Electric Inspectors and directs that they shall in relation to mines exercise the powers and perform the functions of an Electric Inspector under the said Act, in the whole of India, except the State of Jammu and Kashmir.

[No. EL-II-207(14).]

A. N. KHOSLA, Addnl. Secy.

MINISTRY OF HEALTH

New Delhi, the 24th January 1953

S.R.O. 235.—It is hereby notified for general information that in pursuance of the provisions of sub-section (2) of section 10 and section 15 of the Indian Nursing Council Act, 1947 (XLVIII of 1947), the Indian Nursing Council has declared that the following qualifications shall be recognised qualifications for the purpose of the said Act:—

Certificates granted by the Madhya Pradesh State Nursing Council in General Nursing and Midwifery.

[No. F.11-19/52-MI.]

KRISHNA BIHARI, Asstt. Secy.

MINISTRY OF REHABILITATION

New Delhi, the 22nd January 1953

S.R.O. 236.—In exercise of the powers conferred by section 23 of the Evacuee Interest (Separation) Act, 1951 (LXIV of 1951), the Central Government hereby directs that the following further amendments shall be made in the Evacuee Interest (Separation) Rules, 1951, namely:—

In the said rules,—

(1) in rule 9, after the words ‘may be filed’ the words ‘and the date of hearing’ shall be inserted;

(2) in sub-rule (2) of rule 11—

(i) in clause (c), the word ‘or’ shall be added at the end;

(ii) after clause (c) as so amended, the following clause shall be inserted, namely:—

“(d) in such other manner as the Competent Officer may deem fit.”

(3) for rule 11A, the following rule shall be substituted, namely:—

"11A *Certain evidence regarding valuation of property to be admitted.*—Notwithstanding anything contained in the Indian Evidence Act, 1872 (I of 1872), or any other law for the time being in force, the competent officer shall, for the purpose of determining the money value of any composite property under section 8 of the Act, admit in evidence—

- (a) in the case of agricultural land, a certified copy of the classified scales of land value prepared by any Government authority; and
- (b) in the case of any other immovable property, a certified copy of the proceedings before any officer of the Government relating to the determination of the money value of such property."

(4) in rule 11D, after clause (d) the following clause shall be inserted namely:—

"(e) from the sale proceeds such costs of, and incidental to, auctioning the composite property as may be specified shall be deducted before the sale proceeds are distributed between the Custodian and the claimant,"

(5) in Form A, after item 5, the following item shall be inserted, namely:—

"6. The names and description of evacuees who have an interest in the composite property."

(6) in Form D:—

(a) after item 4, the following item shall be inserted:—

"4A. The names and description of evacuees who have an interest in the composite property."

(b) for the words 'signature of applicant' the words 'signature of claimant' shall be substituted.

(7) in Form F, in the second paragraph for the words 'You are hereby required the words 'You may file a written statement in answer to the above claim on or before and you are hereby required' shall be substituted.

[No. 82(13)/51-Prop.]

MANMOHAN KISHAN, Asst. Secy.

MINISTRY OF TRANSPORT

PORTS

New Delhi, the 21st January 1953

S.R.O. 237.—In exercise of the powers conferred by sub-section (1) of section 35 of the Indian Ports Act, 1908 (XV of 1908), the Central Government hereby directs that the following further amendment shall be made in the notification of the Government of India in the Ministry of Transport No. 14-P(35)/50, dated the 12th April 1950, specifying the fees for services rendered at the Port of Kandla, namely:—

In the schedule to the said notification, under the heading "F. Hire of Port Craft", the following notes shall be added at the end, namely:—

"Note 1.—Free periods will be allowed as under:

- (a) in the case of cargo other than salt—two days from the time of supply;
- (b) in the case of salt—24 hours before the arrival of the steamer and 24 hours after the departure of the steamer;
- (c) when lighters and tugs (in two) are sent to Navlakhi on hire—72 hours from the time of supply;
- (d) when sent to Kutch Mandvi and Mundra—168 hours from the time of supply.

Note 2.—Detention charges per day will be charged in all cases from the expiration of free periods as under:

- (a) for the first three days 25 per cent. of the hire charge per day or part thereof;
- (b) for the next four days 50 per cent. of the hire charge per day or part thereof; and

(c) thereafter 100 per cent. of the hire charges per day or part thereof.

Note 3.—The development Commissioner, Kandla, may in his discretion waive the recovery of the entire or a portion of the detention charges, if he is satisfied that the delay is occasioned by circumstances beyond the control of the hirer."

[No. 14-P(35)/50.]

C. PARTHASARATHY, Under Secy.

MINISTRY OF LABOUR

New Delhi, the 22nd January 1953

S.R.O. 238.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the All India Industrial Tribunal (Bank Disputes), in respect of an application under section 33-A of the said Act preferred by Shri K. Kasiviswanathan of the Indian Overseas Bank Limited.

AWARD

BEFORE THE ALL INDIA INDUSTRIAL TRIBUNAL (BANK DISPUTES)

COMPLAINT No. 96/52

Shri K. Kasiviswanathan

Versus

Indian Overseas Bank Ltd.

This purports to be a complaint under Section 33A of the Industrial Disputes Act, 1947 (Act XIV of 1947) by Shri K. Kasiviswanathan who was employed as a clerk in the Tuticorin branch of the Indian Overseas Bank. His grievance is that his services were terminated on 30th July 1951. In June 1951 he had developed a skin disease and he was advised to take leave on medical grounds. As the local agent had no power to sanction leave for more than two weeks the complainant applied to the Central Office for three month's leave. He enclosed a medical certificate from the Medical Officer of the Government Hospital, Tuticorin along with his leave application. The Bank, while rejecting his request for leave, informed him in its letter dated 30th July 1951 that it was also terminating his services in view of the highly contagious disease from which he was suffering. According to him the Medical Officer recommended leave for treatment and the medical certificate merely stated that the petitioner was suffering from Hansen's disease (skin clipping for *Lepra Bacilla* Positive). On 7th November 1951 he obtained another certificate from the doctor that his case was of a non-infective neural type and that he was fit to carry out his duties. Nevertheless, the Bank did not review its original decision terminating his services. Again, on 13th February 1952 he sent another report of the Medical Officer to the Bank with a certificate that the disease was arrested and the workman was free from the disease and so was fit to joint duty. He got a reply that the Bank would not reconsider their earlier decision.

2. It will be seen that the petitioner's services were terminated prior to 5th of January 1952 and not during the pendency of the reference before us. In these circumstances it was not incumbent on the Bank to obtain our permission under Section 33 of the Industrial Disputes Act, 1947. This complaint under Section 33A of the aforesaid Act will not, therefore, lie. His case is not one of those cases referred to us by the Government of India. Notification No. S.R.O. 42, dated 8th January 1952. We have therefore no jurisdiction to go into this case. We hold accordingly and pass an award as above.

(Sd.) S. PANCHAPAGESA SASTRY, *Chairman.*

(Sd.) M. L. TANNAN, *Member.*

(Sd.) V. L. D'SOUZA, *Member.*

BOMBAY;

The 14th January 1953.

[No. LR-100(18).]

S.R.O. 239.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following awards of the All India Industrial Tribunal (Bank Disputes) in the matter of victimisation, etc., of workmen in banking companies.

AWARDS

BEFORE THE ALL INDIA INDUSTRIAL TRIBUNAL (BANK DISPUTES)

(In the matter of the dispute mentioned in the schedule to the Government of India, Ministry of Labour Notification No. S.R.O. 42 dated 8th January, 1952).

IN REF. No. 2/52

Shri Sathahipathi Rao

Versus

Imperial Bank of India

This is one of the disputes referred to us by the Government of India, Ministry of Labour Notification No. S.R.O. 42, dated 8th January 1952. It appears in the schedule to the Notification as Serial No. 409. The nature of the dispute is set down as "Termination of services".

2. After notice to the parties this case was taken up for hearing at Madras on 22nd December 1952. The workman appeared in person. The Imperial Bank of India was represented by its Counsel, Mr. C. Doraiswami Iyengar.

3. The complaint shows that Shri Sathahipathi Rao was a permanent clerk of the Guntur branch of the Imperial Bank of India. In April 1948, he applied for about 13 days leave and went to his native place to make arrangements for his sister's marriage. He was granted 9 days' ordinary leave from 24th March 1948. He ought to have rejoined duty on 6th April 1948 at Guntur. On 5th April 1948, however, he posted a letter from Eluru applying for one month's further leave on loss of pay on the ground of some private domestic affairs. On the 24th April 1948 his services were terminated. His pay up to that date together with a month's salary in lieu of notice was given to him. It is against this order that he has raised this dispute.

4. The Bank's reply statement filed before us admits that he was originally employed on probation on 12th July 1946. His probation period was extended for some more time and he was finally confirmed as a regular clerk as from April 1947. According to the Bank's statement even in 1947 he took leave twice without notice. In March 1948 he was granted 9 days' leave and was due to rejoin duty on 6th April 1948 at Guntur. When the Bank got his letter posted from Eluru asking for one month's further leave on loss of pay on private domestic affairs, the Guntur Agent telephoned the Bank's Agent at Eluru to get into touch with the clerk and to direct him to rejoin duty at once at Guntur. But in spite of the advice of the said Agent, the clerk refused to rejoin duty whereupon the case was reported to the Madras Local Board of the Bank who, after consideration of the whole matter, resolved to dispense with his services in view of his conduct.

5. The employee stated before us that it was not true that the Eluru Agent told him that the Guntur Agent wanted him back at Guntur. According to the employee he was only asked to explain why he wanted the leave and he duly informed, though orally, the Eluru Agent that his mother was ill, that he was the only person available to attend on her and that therefore he could not proceed to Guntur and join duty. Copies of correspondence between the Bank's Guntur Agent and the Eluru Agent and the Guntur Agent and the Local Board of the Bank at Madras have been filed before us. Copies of two letters written by two independent persons to the Agent of the Bank at Eluru, one by Mr. R. V. Rama Rao, B.A., B.L., and the other by Dr. R. Venkata Rau, M.B., B.S., have also been included in the correspondence. It is clear from these that the Eluru Agent as also these two independent gentlemen all tried to persuade the workman to rejoin duty at the end of his leave but he, pleading his mother's illness, declined to do so. We therefore do not accept the case of the workman about what happened at the relevant period. We accept the statements of the Eluru Agent and the two independent gentlemen who wrote to the Bank explaining what happened. It is true that his mother was ill as appears from the letter of Dr. R. Venkata Rau to the Bank. The truth of the matter appears to be that owing to his mother's illness the employee was insisting on staying at Eluru but was not prepared to work at Guntur. If he had taken the trouble to explain these matters properly to the Agent at Guntur in person or to the higher authorities by correspondence it is not unlikely that his case would have been considered more sympathetically and he might have been granted leave if

the exigencies of the Bank permitted the same. It is rather unfortunate that this young man should not have acted in the manner in which he did. He must now take the responsibility for his decision and he cannot now complain of the result of the same. His persistence even now in denying the factum of the advice given by two disinterested persons as stated above only aggravates his conduct. Guntur is only about 40 miles distant from Eluru. Had he acted with greater discretion he could have easily contacted the Guntur Agent personally and represented his needs so as to get a favourable order. But he never cared to do so. We cannot therefore say that the order of the Bank terminating his services was unjustified, particularly because this is not the first time when he overstayed his leave without getting sanction. On the present occasion he was warned and definitely asked to report for duty at Guntur and he deliberately refused to do so. In these circumstances, we cannot hold that he has made out his case that the order terminating his services was either illegal or so grossly improper as to merit our interference. In the result our award is that his complaint should be dismissed.

(Sd.) S. PANCHAPAGESA SASTRY, *Chairman.*

(Sd.) M. L. TANNAN, *Member.*

(Sd.) V. L. D'SOUZA, *Member.*

BOMBAY;

The 14th January, 1953.

BEFORE THE ALL INDIA INDUSTRIAL TRIBUNAL (BANK DISPUTES)

(In the matter of the dispute mentioned in the schedule to the Government of India, Ministry of Labour Notification No. S.R.O. 42 dated 8th January, 1952).

IN REF. No. 2/52

Shri T. Venkatachalam Pillai

Versus

National Bank of India Ltd.

This is one of the disputes referred to us by the Government of India, Ministry of Labour Notification No. S.R.O. 42, dated 8th January 1952. It appears in the schedule to the notification as Serial No. 411. The nature of the dispute is set down as "Dismissal from service".

2. We heard this case at Madras on 23rd December 1952. The workman appeared in person and the Bank was represented by its Counsel.

3. The allegations in the petition of the workman are as follows:—He was employed as a clerk in the National Bank of India, Madras. He entered service in the year 1921 and after 18 years' service he was 'dismissed' on 31st March 1939. His work was always satisfactory and on no occasion was there any charge against him for misconduct or grave negligence or dereliction of duty. On 31st March 1939 his services were terminated and a month's salary was paid to him in lieu of a month's notice. No charge was framed prior to his wrongful termination of services and he was given no opportunity to show cause why he should not continue in the service of the Bank. At that time he was getting about Rs. 48 per mensem. Had he been allowed to continue in service he would be getting now something like Rs. 300 per month and besides would be entitled to get pension on retirement. He has been unemployed ever since the date of his dismissal. He submits that he is ready and willing to work in the Bank and prays for reinstatement, besides claiming a reasonable solatium for wrongful dismissal.

4. The written statement of the Bank avers that there was no dismissal but only termination of services which the Bank was legally entitled to do by paying to the workman a month's salary in lieu of notice. He was paid the full amount standing to his credit in the Bank's Indian Staff Provident Fund. It is stated that his work was found to be unsatisfactory in spite of several warnings and that was the reason why his services were terminated. It is further urged that this took place some 13 years ago and that it would be quite contrary to equity or law that after such a long period the workman should be allowed to agitate a claim of this nature before this Tribunal.

5. During the argument before us it was stated by the Bank that most of the records relating to this workman and the termination of his services were not available owing to the long lapse of time. Even the Sen Tribunal which went into the matter did not entertain this case as it was of opinion that this was a state claim besides being only an individual dispute. We agree with their view that having

regard to the long lapse of time since the termination of the services of this workman it would not be just or proper to give the workman any relief, particularly as most of the records are not available. We accordingly pass an award dismissing this complaint.

(Sd.) S. PANCHAPAGESA SASTRY, *Chairman.*

(Sd.) M. L. TANNAN, *Member.*

(Sd.) V. L. D'SOUZA, *Member.*

BOMBAY;

The 14th January, 1953.

**BEFORE THE ALL INDIA INDUSTRIAL TRIBUNAL (BANK DISPUTES)
BOMBAY**

(In the matter of the dispute mentioned in the schedule to the Government of India, Ministry of Labour Notification No. S.R.O. 42 dated 8th January, 1952).

IN REF. No. 2/52

Shri R. M. Solayappa

Versus

Indian Bank Limited

This is one of the disputes referred to us by the Notification of the Government of India, Ministry of Labour, No. S.R.O. 42 dated 8th of January 1952. It appears in the schedule to the Notification as Serial No. 218. The nature of the dispute is set down as "Dismissal from service".

2. The case of the workman is that, when he was the Agent of the Indian Bank Ltd., at Pudupatti there was a shortage in the cash balance on one occasion. As a result of this incident, for which he was not responsible, he was transferred as Accountant and directed to join duty at the Tuticorin branch of the Bank. There was no enquiry held by the Bank in the first instance and he therefore applied for leave and also insisted that the Bank should enquire into the matter. Some time later, the Bank found on enquiry that the shroff was responsible and terminated his services but did not reconsider the case of this workman. He therefore declined to join duty as Accountant at Tuticorin. This, according to him, amounted to degrading him and also cast a slur on his name. He was thereafter dismissed from the Bank's service. The complaint admits that in pursuance of the recommendation of the Sen Tribunal, who enquired into the matter, the Bank's contribution towards his provident fund was granted to him, although under the rules he was not entitled to it. His present prayer is that he should be given back the post of the Agent in any Sub-Office of the Bank and that he should also be given compensation for the period of his enforced unemployment.

3. The Bank, in its reply statement, raises the question of the Tribunal's jurisdiction as the complainant being an Agent cannot be said to be a workman. The allegations of the Bank are that on the expiry of the privilege leave on 6th June 1949 he applied for 2 months' special leave which was refused and thereafter in spite of repeated directions to join duty at Tuticorin as Accountant and despite warning that disciplinary action would be taken against him he refused to join duty at Tuticorin. On 22nd August 1949 he was asked to show cause why he should not be dismissed from service for disobedience of orders. He did not submit any explanation. He was dismissed from service on 19th October 1949. He also appealed to the Labour Commissioner, Madras for redress under the Madras Shops and Establishments Act but the Labour Commissioner dismissed his petition on the ground that he was an officer and the Act was not applicable to him.

4. After notice to the parties we heard this case at Madras on 24th December 1952. The workman was himself present in person. The Bank appeared through its Counsel, Mr. Lakkappa Rai. There was no dispute about the facts as stated above, viz., that he was asked to join duty at Tuticorin and warned that, if he persisted in not joining duty there as Accountant, disciplinary action would be taken against him. He did persist in his attitude. He never joined duty at Tuticorin. Even during the hearing of the Sen Tribunal when it was put to him whether he was then willing to take up service as Accountant at Tuticorin he declined to do so. It is admitted before us that there was some lack of supervision on his part when he was in charge and acting as Agent of the Pudupatti branch. This was responsible for the loss of cash. The Bank, however, did not take any disciplinary action against him, but merely transferred him to Tuticorin as Accountant on the same pay and emoluments as before. In one sense this might be taken to be an

expression of disapproval of his conduct as Agent. The workman took it as a slur on his reputation and would not acquiesce in the order. We are unable to say that the conduct of the Bank was improper or amounted to any act of victimization. That was the view of the Sen Tribunal also, although as a matter of indulgence they recommended that he might be given the Bank's contribution to his provident fund to which he was not entitled under the rules of the Bank. That amount has been paid in pursuance of the recommendation of that Tribunal. The workman is not satisfied even with that.

5. We are unable to find any impropriety in the order of the Bank transferring him from Pudupatti to Tuticorin and posting him there as Accountant. Under the Staff Regulations of the Bank, Accountants also are classed amongst officers just like Agents. Admittedly there was no diminution in his pay or emoluments. Apart from the question of want of jurisdiction on the ground of the complainant not being a workman, there is the further question on the merits whether the order is improper. We are not satisfied that the order was so improper or unjust as to call for our interference.

6. In the result we pass an award that this complaint should be dismissed.

(Sd.) S. FANCHAPAGESA SASTRY, *Chairman*.

(Sd.) M. L. TANNAN, *Member*.

(Sd.) V. L. D'SOUZA, *Member*.

BOMBAY;

The 14th January, 1953.

BEFORE THE ALL INDIA INDUSTRIAL TRIBUNAL (BANK DISPUTES) BOMBAY

(In the matter of the dispute mentioned in the schedule to the Notification of the Government of India, Ministry of Labour No. S.R.O. 42, dated 8th January 1952.)

IN REF. No. 2/52

Shri Krishna Pillai

Versus

Indian Overseas Bank Limited

This is one of the disputes referred to us by the Notification of the Government of India, Ministry of Labour, No. S.R.O. 42, dated 8th January 1952. It appears in the schedule to the notification as Serial No. 274. The nature of the dispute is set down as "Discharge from service".

2. This case was argued before us at Madras. The workman was represented by his Counsel, Shri Mohan S. Kumaramangalam and the Bank by its Counsel Shri K. S. Naidu. The services of Shri Pillai were terminated with effect from 7th February 1950. According to him this was done without any reasonable cause. He claims to have been a member of the Executive Committee of the Indian Overseas Bank Employees' Union, Madras. The termination of his services is stated to be an act of victimization due to his trade union activities. Subsequent to his discharge he was unemployed over a considerable period and he was constrained to receive payment of the provident fund contributions which he did without prejudice to his claims against the Bank for re-instatement. He has since been employed and is now not seeking re-employment but he claims that he should be compensated adequately.

3. The Bank's reply denies that he was victimized for trade union activities. The termination of his services was due to reorganization and rationalization of the Central Office. Surplus staff was retrenched in February 1950 and Shri Krishna Pillai was one of the six employees then retrenched. He was given a month's salary in lieu of notice. He had put in only 1 year and 7 months' service. His contributions to the provident fund had also been paid to him. It is also stated that Shri Pillai had made a similar claim before the Central Government Industrial Tribunal at Calcutta and that that Tribunal disallowed his claim by its award published in the Gazette of India, dated 5th May 1951. The reference to this Tribunal seems to have been under a misapprehension as to what had happened already.

4. A preliminary question was first argued as to the effect of the previous award of the Central Government Industrial Tribunal, Calcutta and the subsequent reference by Government of this dispute to us by the Notification of the 8th January 1952. Apart from that, on the merits it was argued that there was no proof of

any act of victimization and that the termination of the services of the workman was due to the retrenchment of staff due to rationalization in the Central Office of the Bank. On behalf of the workman it was contended that the Government of India having referred the dispute to this Tribunal by the Notification of the 8th January 1952 the previous award of May 1951 should be taken to be no bar to the investigation of the case on the merits once again by us. It was stated that there were people who were junior in service to Shri Pillai who were retained and the principle of 'last to come, first to go' was not followed. In answer to a question from the Tribunal the Bank's Counsel admitted that there was no charge of inefficiency against the employee and no adverse remark against him in his service register. It was also admitted that there were one or two people junior to him in service who were retained.

5. During the course of the argument, the parties, however, agreed to consider a settlement of the matter and the case was adjourned to next day for reporting settlement. It was stated before us thereafter that the parties were agreeable to accept any figure which the Tribunal may consider as a reasonable solatium without admitting any strict legal liability in the matter. It was ultimately agreed that the Bank would pay Rs. 350 to the workman in full settlement of his claim. We accordingly pass an award that the Bank do pay Rs. 350 to the workman in full settlement of the claim. It is however to be understood that this settlement had been reached as a special case without being a precedent for similar cases. We are asked to make this clear and we do so.

(Sd.) S. PANCHAPAGESA SASTRY, *Chairman.*

(Sd.) M. L. TANNAN, *Member.*

(Sd.) V. L. D'SOUZA, *Member.*

BOMBAY;

The 14th January 1953.

BEFORE THE ALL INDIA INDUSTRIAL TRIBUNAL (BANK DISPUTES) BOMBAY

(In the matter of the dispute mentioned in the schedule to the Notification No. S.R.O. 42, dated 5th January 1952 of the Government of India, Ministry of Labour.)

IN REF. No. 2/52

Shri C. P. Kuruvilla

Versus

The National Bank of India Ltd.

This is one of the disputes referred to us by the Notification of the Government of India, Ministry of Labour, No. S.R.O. 42, dated 8th January 1952. It appears in the schedule to the Notification as Serial No. 412. The nature of the dispute is set down as "Termination of service".

2. Shri Kuruvilla was employed as a clerk at the Rangoon branch of the National Bank of India Ltd. He had 10 years' service when World War II broke out. Even when Rangoon was being bombed, he says, he stuck to the Bank and was staying in the Bank premises and was in charge of the Current Accounts Department. He claims to have been doing additional work like preparing duplicate copies of accounts. When the Bank shifted to Mandalay from Rangoon he attended that office and was doing duty there. Finally when the Bank ceased functioning even at Mandalay he left Burma for India and came on foot to Calcutta. There he was laid up in the Presidency College Hospital with malaria contracted on his forced trek to India. Subsequently he was granted leave and he was asked to sign a contract agreeing to return to Burma after cessation of hostilities. In 1943, he was posted to the Bombay branch of the Bank but after some months' work he was again reverted to the Evacuee Section then working at Calcutta and was given half salary during his stay at his home in Travancore State. Finally, though he produced a medical certificate of fitness, his services were terminated with effect from 1st January 1945. His protests were not heeded and several further representations by him even when the Rangoon branch had started functioning after reconquest of Burma met with no success. He alleges that he was victimized because during his stay at Bombay he had formed an Union of the employees and had been elected as Assistant Secretary of that Union. Though asked by the management to sever his connection with the Union he declined to do so and this

is the real cause, according to him, of the termination of his services. He prays that he should be reinstated in service and also paid half salary until the date of the Bank's re-opening in Burma and also for other reliefs.

3. The Bank in its written statement admits that the petitioner who had been employed in Burma left for India and reached Calcutta. According to the Bank it continued to pay him his full salary till September 1942. Besides he was also paid a special emergency contribution of three months' pay. He was asked to give an undertaking to return to Burma when the Bank re-opened its branch there and in view of this undertaking given by him he was being paid half salary from October 1942. He was never prevented from accepting any employment in India. He was again employed for some time in the Bombay branch of the Bank from 22nd May 1943 but he was found to be frequently remaining absent from his duties in the succeeding months with the result that, acting on medical advice, the Bank finally terminated his services in Bombay at the end of June 1944. He was paid half salary from July to December 1944. He was also paid the Bank's, as well as his own, contribution to the Indian Staff Provident Fund. He could not be re-absorbed in Rangoon as there were no vacancies. The Bank denies having acted by way of victimization for alleged trade union activities. As it is more than 7 years since his services were terminated the Bank submits that it will be contrary to all principles of equity and law that the employee should be allowed to agitate a claim of this nature after such a lapse of time.

4. The correspondence between the parties shows that the Bank has been showing great sympathy towards its Rangoon employees who had been obliged to leave and had come to India after great difficulty. It could not, however, be expected that the Bank would continue to be indefinitely generous towards such employees. Down to 1944, most of them who had been included in the Evacuee Staff were being paid half salary. Shree Kuruvilla was one such person. It is true that owing to his illness contracted by him during his return from Burma to Calcutta he was somewhat irregular in his attendance when he was for about a year employed in the Bombay branch of the Bank. It may be that this was due to no fault of his and this by itself might have been condoned. It is also true that he had submitted a medical certificate towards the end of 1944 that his health had improved and he was fit to resume duty. Nevertheless, as from January 1945 his services were terminated and no further amounts were paid to him by way of allowance. He was not re-absorbed in the Rangoon branch when the Bank started functioning in Burma. The Bank explains that it had two branches originally, one at Rangoon and one at Mandalay and the entire staff could not be re-absorbed. It is not possible for us in these circumstances to find that the termination of his services was unjustified and the Bank's refusal to re-employ him was due to any act of victimization. His case no doubt is one of hardship. At the same time the misfortunes caused by the war affected not only the employees but also the banks as well. The correspondence shows that the policy adopted by the Bank towards its Burma employees who had come along to India was in no way unsympathetic or lacking in generosity. It is more than 7 years now since the services of Shree Kuruvilla were terminated and under circumstances when it could not be foreseen when the war would end and how. We cannot, therefore, hold that the workman should, as a matter of right, be reinstated and given compensation as per his prayer.

5. The Manager of the National Bank of India Limited, Madras branch who was present in Court along with the Bank's Counsel assured us however that he would sympathetically look into the case of this workman with a view to offer him a fresh employment in the Bank's service. He however could not give an undertaking to that effect. We feel that this is a proper gesture and we trust that the management will be able to consider the case of the workman sympathetically. Beyond these recommendations we cannot grant any further relief to the workman. In the circumstances our award is that this complaint should be dismissed.

(Sd.) S. PANCHAPAGESA SASTRY, *Chairman.*

(Sd.) M. L. TANNAN, *Member.*

(Sd.) V. L. D'SOUZA, *Member.*

BOMBAY;

The 14th January 1953.

[No. LR-100(30).]

New Delhi, the 24th January 1953

S.R.O. 240.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Calcutta, in the industrial dispute between Messrs. Insurance of India Ltd., Calcutta, and their workmen.

AWARD

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA.

20/1 GURUSADAY ROAD, BALLYGUNGE, CALCUTTA-119

Before Shri K. S. Campbell-Puri, B.A., LL.B., *Chairman*.

REFERENCE No. 15 OF 1951

BETWEEN

Messrs. Insurance of India Ltd., Calcutta

AND

Their Workmen

Appearances.—Shri D. L. Sen Gupta, Advocate, assisted by Shri Puspamoy Das Gupta, Joint Secretary, and Shri N. R. Mazumdar, President, Insurance Office Employees Association of Bengal, for the employees of Insurance of India.

Shri Sovamoy Banerjee, Advocate, assisted by Shri P. Chakraborty, Director of the Insurance of India, for the Company.

AWARD

By notification No. LR90(120), dated 28th November/4th December 1951, the Government of India in the Ministry of Labour referred an industrial dispute existing between the management of 12 insurance companies in Calcutta mentioned in Schedule I and their workmen in respect of the matters specified in Schedule II which reads as follows:

SCHEDULE II

1. Scale of pay, dearness allowance and house rent.
2. Bonus.
3. Provident Fund or pension, gratuity, staff insurance.
4. Hours of work.
5. Leave—casual, privilege and medical.
6. Retirement age.
7. Security of service.
8. Overtime payment.
9. Free mid-day tiffin.
10. Provision for tiffin room, library and other similar amenities.
11. Medical aid.

As the number of insurance companies mentioned in Schedule I was large and there was every possibility of divergent pleas to be taken up by the said companies the Reference was divided into 12 different cases in order to avoid confusion. In the matter of Messrs. Insurance of India Ltd., and their workmen the case was registered as Reference No. 15 of 1951. Usual notices were issued to all concerned and on the completion of pleadings this came up for final hearing in the first week of December 1952. Sometime was spent however on the inspection of documents in the custody of the company by the Union's representatives. The actual proceedings commenced in the second week of December but once again discontinued on account of tour scheduled for the hearing of some cases emanating from Uttar Pradesh and were concluded on 7th January 1953.

The workmen have stated that partition of India has badly affected the economic condition of West Bengal and thereby cost of living has increased causing a rapid deterioration in the standard of living, particularly of middle class from which the employees of insurance companies are recruited. And although there have been abnormal rise in the cost of living the Insurance of India Ltd. employers have not risen to the occasion and have turned deaf ears to the demands of the employees. Their demand accordingly is for general increase in the scales and grades of pay with adjustment of salaries retrospectively as well as for the grant of dearness allowance, house rent, Bonus and retiring benefits etc. as formulated in the charter of demands annexed with the statement of claim. On the other hand the company

has explained in their written statement that the rise in the cost of living is a matter of general solution and is not a particular concern of the company who have to work under certain statutory provisions whereby they are forbidden to spend beyond a certain limits co-related to their revenue. To be more precise the company's position is that they are circumscribed by the expense ratio under the statutory provisions of the Insurance Act so far the expenses for the management are concerned and as such the company has not the capacity to pay anything more beyond what they are paying to their employees. Replying to the charter of demands it was stated that the demands have been pitched much higher and it is not possible to meet the same in the present financial position of the company.

The Union in support of their demands examined seven witnesses including the President and the Joint Secretary of the Insurance Office Association of Bengal and also filed a number of documents exhibited on the record (Ex. A to H). The documentary evidence comprises of a synopsis of Messrs. Insurance of India Ltd. Balance Sheets for the last three years, copies of the Pay Scales of other companies and a chart giving the names of all the employees with their academic qualifications, date of employment and the amount of present emoluments etc. The company in rebuttal and in support of their pleas relied on Balance Sheets and valuation reports for the last several years, and some comparative statements were also filed showing the premium income and expense ratio of different companies as well as the price index of food stuff and the output of clerical staff in the case of other companies, exhibited on the record Ex. 1 to Ex. 21. A comparative statement giving the names of all the employees with qualifications and their present salary and allowances was also placed on the record beside the oral evidence which consisted of two witnesses *viz.* the consulting actuary Mr. S. K. Sen and the Secretary of the Insurance of India Ltd. Arguments were made at considerable length and occupied the Tribunal for full three days.

The real controversy centres round one disputed fact *viz.* whether the company has the capacity to pay and thereby to make increase in salaries and grant other benefits asked for in the charter of demands. Now the evidence adduced on behalf of the employers in this respect was to the effect that the finance of the company is still meagre and in present state of affairs, they are not capable of meeting the demands and that the staff has been receiving increments all right and their salaries are adequate. The employees adduced evidence to show the present financial position of the company and also tried to make out a case that the company had wasted good deal in previous years and in case there had been no waste their position should have been better at this time. Furthermore that even now as borne out from their Balance Sheets of 1950 and 1951 they are spending lavishly on other items of management *viz.* travelling allowance, Directors fee, advertisement, cost of procuration with the result that the expense ratio is mostly spent up in the aforesaid items of management and the employees are neglected and are poorly paid in contrast to other companies. The Union also urged that the company was not restricted in the matter of increase in salary by any statutory provisions of Insurance Act, and it is only a device adopted by the Employers to deprive the employees from their legitimate demands.

In the above context it would be necessary to determine the question of 'capacity to pay of the company' first for the simple reason that the demands can only be considered if the company is found capable of meeting them. In this respect the argument advanced on behalf of the Union is two-fold: (1) it has been contended that the plea of non-capacity to pay has been raised only as a bogey inasmuch as insurance concerns are different from commercial concerns and from the study of premium rates of different companies it will be evident that there is no difference in premium rates of companies both small and big. It was stressed that premium being the income, limitation of expenses shall be in proportion to the income and as such higher the premium income the greater would be the establishment cost and smaller the premium income the lesser the establishment cost. It was sought to argue that both in big and small companies the expense in proportion to the premium income remain almost the same, and so the demands in case of big and small companies can safely be made uniformly. Secondly, it was urged that the expense ratio is an artificial device and has been inflated due to lavish expenditure of the management in the field and in maintaining the top heavy administration. It was urged that the implication of insurance law is only to curtail expenditure in the field and not to deprive the employees from fair wages to which they are entitled and it was concluded that the company can control other expenses and can safely meet the demands of the employees which constitute the first charge upon the company *viz.* fair wages to the employees. It was next argued that a major part of the funds are spent on procuration of business which is to be controlled under statutory provisions of Insurance Act but the management goes on making lavish expenditure in the

field in complete disregard of the limitation expense prescribed by the statute and consequently the expense ratio shoots up high. Shri Sen Gupta arguing on behalf of the Union asserted garrulously that let workmen be paid fair wages and the management should manage its affairs after meeting the demands of its employees. He went to the length of stating that the claim of the employees be considered irrespective of expense ratio as a first charge so that the company may keep their house in order after paying these first charge expenses in future. Finally, it was submitted that if the company cannot pay the fair wages of the employees they have no right to exist, because financial inability is no excuse. Reliance was placed on a decision of Labour Appellate Tribunal in Caltex Company case reported in Labour Appeal cases August 1952 and an adjudication report of Justice Rajadhakshya in the trade dispute between the Posts & Telegraphs Department and its non-gazetted employees. Reference was made in particular to the observations at pages 86 and 87 of the adjudication.

On the other hand Shri Bancrjee while controverting the argument of Shri Sen Gupta argued that in insurance business it is not the rate of premium but the total premium earned out of which only a certain percentage is allowed under the statutory provisions of Insurance Act to be spent as management expenses which include the salaries of the employees of the company. It was maintained that as such the paying capacity of different companies is bound to be different inasmuch as the total money available for disbursement in a small company is much less than in a big company. The Counsel proceeded that the expense ratio has been fixed under a statute and it was wrong to say that the same is a device to shut out the just demands of the employees or that the entire expense ratio is artificial or inflated or it has been made higher due to the lavish expenditure of the management in the field. It was emphasised that the expense ratio is the foundation of the process of disbursement under Rule 17-D of the Insurance Rules and the Company has necessarily to cover different items of expenditure some of which are again covered by certain ratio. It was next urged that the nature of insurance business is such that a great amount has to be spent on field expenses in order to maintain the existence of the company and that the field workers are really the producers of wealth so far the company is concerned. It was submitted that if the proposition propounded by the other side in regard to the field work is acceded then it would be impossible for a small company like the Insurance of India Ltd. or for any new company to procure any new business in competition with the big companies. It was concluded that the theory of uniform charter of demands in the case of all companies big or small is wholly untenable and furthermore the insurance companies case has no analogy with the mercantile firms in which the cost of manufacture is fixed and goes with the output. Reference was made to observations made in the award of the All India Industrial Tribunal (Bank Disputes), Bombay at page 16 (para. 46) wherein uniformity was deprecated and banks were classified in certain groups i.e., A, B and C. Finally it was urged that expense ratio although is fixed by the management yet it is approved by the Controller of Insurance regard being had to the premium income and that the company in purview of the statutory prohibition ordained in Section 40(b) cannot go beyond the fixed ratio.

So far the argument of the Union Counsel Shri Sen Gupta 'that the salary of employees is a first charge and they must get fair wages in the first instance irrespective of expense ratio', suffice it to say that the argument is more of the nature of forensic upshot than a balanced plea of collective bargaining contemplated under the Industrial Disputes Act and needs no serious comment. The authorities cited also are not in point.

In the matter of Caltex India Ltd., the Labour Appellate Tribunal no doubt held that the floor level of fair wages is somewhat above minimum wages and the ceiling is the level of living wages but at the same time their lordships observed that to determine fair wages the important factors are capacity of the industry to pay and the prevailing rate of wages. It was further remarked that these factors are to be appraised on the footing of industry cum region basis. This principle has also been enunciated in Buckingham & Carnatic Mills case and cannot be lost sight of. But the fact remains that capacity to pay is not an uniform feature and must be determined in the case of each company, in relation to their financial position. It seems clear to me that the short cut of applying the same principle in the matter of scales of pay uniformly in the cases of all companies as sought to be argued by the Union side has not been the dictum laid down in any case. The All India Industrial Tribunal (Bank Disputes), Bombay, in the case of Banking companies also classified the various banks into three different categories.

The other reference made to the observations of the learned adjudicator in the trade dispute between the Posts and Telegraphs Department and its non-gazetted employees has also no proper bearing in the adjudication of this case and is of no avail to the Union side as borne out by the said observations which are reproduced for facility of reference:

"182. I doubt also whether the financial capacity of the Department is at all a relevant consideration for the purpose of this adjudication. I have not been asked to consider what relief is required by the employees on the new scales of pay having regard to the capacity of the Department to pay it. It is the general public who take advantage of the services supplied by the Department who are the employers of the employees in the Department, through their trustee the Government. If on a dispassionate consideration of the question it is found that the employees are not getting a reasonable wage it is for the Government, and therefore indirectly for the public, to find money by a suitable executive or legislative action. The question of what is a reasonable wage under the circumstances must be examined in relation to the relative wage level in the country and against its economic background. It may conceivably happen, as it did happen during the economic crisis that the public may not be able to provide funds for the purpose of giving an adequate wage to its employees in which case the employees must themselves share the economic distress of the country and be satisfied with wages which may not be regarded as adequate. Considering the problem from this point of view the paying capacity of the Department is strictly not a relevant consideration. The paying capacity of the Department depends upon what price the public are prepared to pay for the services they receive. Ordinarily the wages of the employees are the first charge on the receipts of a commercial or industrial concern. It is altogether wrong in principle to provide a cheaper service by depressing the cost of production as a result of abnormal lowering of the wages. Such a procedure would in effect mean subsidising the consumer at the cost of human material in the shape of the reduced standard of living of the employees. It must therefore follow that the cost of the service to the consumer must be regulated by a fair wage to the employee. It is thus possible to argue that the surpluses which have been described as 'enormous profits'—though largely due to the increased rates—are also, in some measure, the result of somewhat inadequate wages that were paid to the employees during the war years."

Some of the principles enunciated above by the adjudicator are indeed valuable so far public utility departments are concerned but in the matter of private sector where the commercial concerns have also to exist the same have no analogy and some of the observations rather go against the Union side. The question under discussion shall have therefore to be resolved on the particular merits of this case in relation to the capacity to pay.

Coming to the question of expense ratio the relevant provisions of the Insurance Act, touching the question involved are section 40(b) and Rule 17-D. Section 40(b) deals with the limitation of expenses in life insurance business and he speaks that every insurer transacting life insurance business in India shall furnish with the Controller within the prescribed time statements in the prescribed form certified by an Actuary on the basis of premium currently used by him in regard to new business and shall not spend after 31st day of December 1950 as expenses of management in any calendar year an amount in excess of the prescribed limit. There is however a proviso which provides that where an insurer has spent an amount in excess of the amount permissible under this sub-section he shall not be deemed to have contravened the provisions of this section if the excess amount so spent is within such limits as may be fixed in respect of the year by the Controller after consultation with the executive committee of the Life Insurance Council constituted under section 64 of the Act. Rule 17-D is more explicit with regard to the limitation of expenses of management in life insurance business and may well be reproduced for facility of reference:

"17-D. *Limitation of expenses of management in life insurance business.*—After the 31st day of December 1950, no insurer shall in respect of the life insurance business transacted by him in India, spent as

expenses of management in any calendar year an amount exceeding the aggregate sum of—

- (i) five per cent of all premiums received during the year on policies granting an immediate annuity or a deferred annuity in consideration of a single premium, and five per cent. of all premiums received on other single premium policies during the year;
- (ii) ten per cent. of all first year's premiums and four per cent. of all renewal premiums, received during the year on policies granting deferred annuity in consideration of more than one premium;
- (iii) one-twentieth of one per cent. of the total sum assured by policies on which no further premiums are payable;
- (iv) one per cent. of all annuities paid during the year;
- (v) an amount computed on the basis of the percentages for the time being appropriate to the duration of the insurer's life insurance business specified in the following table.....so on."

Now on the examination of these provisions of the Insurance Act and the appreciation of the arguments for and against I have no hesitation in remarking that the argument advanced on the Union side *viz.* that expense ratio has nothing to do and demands can be met by the company irrespective of that or that it was only a device set up to deprive the employees is apparently fallacious. This is correct that abolition of agency system is the one drastic change effected in the Act but the legislation has furthermore interfered in the insurance business by fixing an expense ratio for management expenses in the interest of policy holders and the amended Act of 1950 obviously aims in achieving that object. Section 40(b) puts a limit to the expenses of management to safeguard the interest of the policy-holders. The restrictions imposed by statute therefore cannot be brushed aside as argued by the employees counsel but I am of the opinion that this is not so drastic in its nature as it was sought to argue on behalf of the employers. The expenses of management as said in the explanation under section 40(b) means all charges wherever incurred whether directly or indirectly and includes commission payments of all kinds and any amount of expenses capitalized. These expenses under the heading 'expenses of management' are also detailed in the Balance Sheets under the heading 'Expenses of Management.' The items given under this head are about 32 and it goes without saying that there is a good scope for those who have to make disbursement of expenses under these heads to take good care of their employees also, who contribute to the prosperity of the Company. The stand taken up by the company in this connection is that under the stress of expense-ratio, whereby they are already going on the wrong side, they are not in a position to put any more strain on the finance of the company in meeting the demands formulated by the union. Shri Banerjee in the course of arguments filed two charts wherein it has been stated that the company shall have to incur an expense of several thousands if increase is made in the scale of pay as demanded by the Union or a scheme of gratuity is introduced. The question at present while dealing with this all important point *viz.* 'capacity to pay' is not what the demands of the Union are because the same shall be considered on their merits in the light of the evidence adduced by both sides with regard to the existing scale of salary. What is actually to be considered in regard to the financial position is as to whether the company is in sound financial position and furthermore whether the expense ratio restriction is so mandatory and inelastic as not to leave any room for considering the demands of the employees on their merits. With regard to the first part of the question formulated above EW-1 Shri H. K. Sen, the consulting Actuary, has stated in his deposition that on the basis of the valuation he could say that the company's position is very sound. He has deposed further in this connection which has some significance and the operative part is reproduced as under:

"I can say on the basis of the valuation that the Company's position is very sound. This is correct that the premium is fixed on any insurance policy over the calculation of mortality, interest, expense loading and bonus loading, and these things are common in all insurance companies. The mortality table is not only a guess of the actuary but is based on the past experience. On going into the report I find that mortality was more favourable to the company than it was expected. This is given in paragraph 2 of the Report. In para. 3 of the Report it is also given that the rate of interest has also increased gradually. The expense ratio increased slightly during the years 1947, 1948 and 1949. The expense ratio of the whole period was 17.8 per cent. There was no statutory limit upto the year 1949. It was fixed for the first time

In 1951. The expense ratio of this company is perhaps 18 per cent. as fixed by the statute. I get my fees for the job entrusted to me. It was not a part of my normal duty to make Ex. 11 but these opinions are sometimes sought for and this time it was sought for and I gave it. I shall charge for this report Ex. 11. I have some experience regarding the administration of insurance business. I am not connected with the administration of course. There is no statutory limitation regarding payment to the employees. There is no statutory limitation also for overhead expenses. The Controller of Insurance however has the right to reduce the salary of any officer if he thinks necessary. In this respect I refer to Section 31(b) of the Insurance Act. In case any company goes beyond the limitation of statutory expenses the Controller may give a warning."

It will be seen that in the opinion of the consulting Actuary there is no statutory limitation regarding payment to the employees. As observed above the limitation is on the expenses of management and it is more a question of disbursement of the expenses than any obstacle in the way of management to consider the demand of employees. Now it is a hard fact that by this time 10 out of 12 Insurance Companies have come to settlement with their workmen having considered their demands favourably and making concessions here and there including increase in the salary scale. These companies who have settled the dispute are also under the same statutory limitation which apparently has not stood in their way. The perusal of Balance Sheets and valuation report produced in evidence by the employers furthermore reveal that the company has been going ahead year by year and has established their business on firm footing. Their net income out of premium in the year 1947 was Rs. 5,96,859. The net income out of premium in the year ending 31st December 1948 rose to Rs. 7,04,265 and it went up to Rs. 8,19,336 in the year ending 31st December 1949. There was a rise in the net premium income in the year 1950 of about one lac and the year ending 31st December 1951 the company got the net premium income of Rs. 10,72,724 and the dividends to share-holders were also recommended at the rate of 3 per cent. (vide Exhibits 2, 3, 4, 5 and 6). The cost of procurement including medical fees as evidenced from Ex. 12-A has also been more since 1945 to 1951 and this might have contributed to the volume of business but at the same time it must have added to the number of policies and consequent more work for the staff. Shri Banerjee in this respect drew my attention to Annexure 5 (Ex. 15) wherein a comparative study of the output of clerical staff of Oriental, Hindusthan and Insurance of India Ltd. was detailed. The average number of policies handled by a clerk in Oriental is shown 296 and as against Insurance of India 259. But it is conveniently forgotten that the premium income of Oriental which is a company of long standing extends to about nine crores of rupees and in the case of Insurance of India it is about 10 lacs only. Judged in this perspective it appears that the clerks of Insurance of India in handling the number of policies are also fairly occupied. These charts also furnish a clue that all companies big and small cannot be considered at the same level. This incidentally resolves the proposition contested between the parties as to whether uniformity can be maintained in the matter of demands in different companies as urged by the Union. The proposition to my mind falls to the ground and it is futile to urge that every company big or small should pay the same emoluments to their employees irrespective of the expense ratio or the total earned income on the only ground that the rates of premium per thousand are almost equal. This argument of the Union has also been falsified in the actual satisfaction of the demands with other companies as evidenced from the deed of settlements arrived at with the several companies under reference. It also resolves yet another question posed for discussion on behalf of the Union namely, "that the emoluments enjoyed by the employees of the other companies viz. Oriental, Prudential, National, Bombay mutual and New India to which particular reference was made, be accepted as instances in the determination of the demands of the Union." The answer apparently is that the instances of bigger companies established long ago or doing composite business cannot be cited as parallel cases for the determination of the demands and each case shall have to be decided on its merits. I had transgressed into some incidental points which cropped up in the course of arguments and again coming to the question of "capacity to pay by the company" it may be reiterated that the company is in a sound financial position and it cannot be urged with good reasoning that the expense ratio limitation stands in their way in considering the demands of their employees with such rigidity as they have sought to bear upon the question. It is also in evidence that the expense ratio actually calculated by the management was 19.25 per cent. but 18 per cent. was fixed by the Controller. It follows that there is, according to the calculation of the management, some scope still left and the stand taken up by the company on the absolute prohibition of going beyond

18 per cent. is not tenable. The penalty of contravening the provisions of section 40(b) regarding the expenses of management as provided under section 64K again appears to be not penal in the sense that the company cannot incur expenses and exceed the limit prescribed inasmuch as it is provided in the statute that in case any contravention of the provisions of section 40(b) occurs the insurer shall have an opportunity of being heard by the Controller who is empowered to administer a warning to the insurer. It follows that the contravention is not made penal when it is done in good faith and was unavoidable in the furtherance of company's business or exigencies of administration. At any rate in the particular merits of this case when there is still some scope in the expense ratio the plea of expense ratio should not stand in the way of the company when the company as a whole is prosperous and has been established on sound footing by this time and as such has the capacity to pay.

In passing I may observe here that some evidence was led by the Union to show that the company is spending lavishly on other items by way of making payments to the Directors, making advances to organizers, writing off bad debts, spending unnecessarily on travelling and spending lavishly in the field. These charges were met by the company also in their evidence of the Secretary and it was argued on the strength of certain data that the expenditure in the field was necessary to procure more business and the bad debts had to be written off on the creation of Pakistan where those debts were incurred in the first instance. I need not go into these questions elaborately because previous expenditure has no bearing and so far expenses allocated for 1951 it is difficult to come to any clear finding on these matters on the score of Ex. A which conflicts with the Balance Sheets (Exs. 1 to 6) without probing into the actual statistical figures on scientific basis. It is furthermore not so easy as the Union has urged to sit on judgment on the decisions of the management as to how they should manage their house in the matter of expenditure; and when the Controller of Insurance has power to interfere under the Insurance Act, they cannot be called upon to explain sheer by citing certain instances that they have allocated more than what was actually needed for field work. The question more or less is that the management expense comprises over various items and the same can be adjusted by accommodating the employees also who play an important part in the commercial concern. At any rate the company can well stand the strain as said above while considering the demands of the employees on merits.

Issue No. (1).—Scale of pay, dearness allowance and house rent.—The Employees Union in their charter of demand⁹ has detailed the following scales and grades of salaries relating to the clerks and sub-staff:

Class III—Clerks etc.

A—Rs. 160—10—230—15—320—20—400—25—450.

B—Rs. 110—8—150—10—200—15—290—20—350.

Class IV—Sub-Staff:

Rs. 65—3—80—4—100—5—150.

It will be seen that in the demands the Union has chosen to divide the clerical staff into two grades A and B and their demand is that clerks of A class should include supervisory staff, departmental incharges and special type of clerks with special qualifications who should start with Rs. 160—10—230 as detailed above, while others comprising of office assistants, typists and clerks be treated under B class and should start with Rs. 110—8—150 etc. The idea underlying manifestly is that there should be two grades of clerks, viz. 'A' of the Upper division and 'B' of Lower division. It is admitted at the same time that no grades are existing at present and the whole clerical staff is being treated as one class although there is variation in their starting pay and academic qualifications etc. In this respect the Union has brought on the record a chart (Ex. E) giving the names of all the employees with particulars and the company has also filed a similar chart Ex. 20. In both of these charts the rate of pay and the qualifications of all the clerks are mentioned but Ex. E deals with more particulars and for the purpose of discussion I would rather take into account Ex. E which presents the view point of the Employees Union. Now, with the exception of Numbers 1 to 5 who are being treated as officers, the remaining employees from No. 6 to 40 i.e. 35 constitute the workmen according to both these exhibits (E) as well as Ex. 20. Out of these 35 a majority of them are assistants and the others are either typists or cashiers. Four of them are graduates and two are under graduates while others are matric or non-matric. There is no evidence brought on the record nor it was urged in the course of arguments that which of these Assistants can be classified under (A) class having special qualifications or to be made departmental incharges or taken

upon the supervisory staff. The company's plea is that all are Assistants and joined the company's service as office Assistants or typists and the question of classification does not arise. I am not prepared to accept the plea in such wide sense that there should be no grades of the staff but my difficulty is that no grades are existing at present in the company and all the workmen whose case has been referred to are on the clerical staff and in the absence of any special pleading and evidence the Tribunal cannot create new posts or classify them into two different categories. There is yet another approach to the question namely, that in the points for determination embodied in Schedule II the word 'grade' or classification has not been mentioned. I am therefore of the opinion that the classification for the purpose of grades does not form the subject of reference and the Tribunal cannot take cognizance of that in purview of section 10(4) of the Act whereby the Tribunal is confined to the points referred to by the appropriate Government for adjudication and cannot travel beyond those specific points. Consequently, only scales of pay of the staff are to be determined. In this connection the two charts (Exhibits E and 20) reveal that there is no standard of starting pay and if one clerk started with Rs. 45 another had accepted the starting salary of Rs. 20 or Rs. 25 and Rs. 35 etc. as borne out from Ex. E. There is one case of Shri Gopal Chandra Sen who joined the Company's service in August 1949 with a start of Rs. 75. He is now getting Rs. 85 only. The position of sub-staff as evidenced from Ex. 20 is worse. Two of them started with Rs. 12 and are drawing Rs. 17 only as basic salary. Two other peons started with Rs. 17 p.m. and their present salary is less than Rs. 40 p.m. It is admitted by the employers that there are no scales of pay and the increment is given every year at the discretion of the employer. This state of affairs can no longer be allowed to exist and I think it is high time that the pay of the employees be regulated by certain scales, which exist admittedly in all the remaining 11 companies which were initially consolidated in this reference. The next question which falls for consideration is as to what should be the starting pay and the scales thereof. In this respect the Union representative produced in evidence a copy of the grades and scales of pay of Bombay Mutual Life Insurance (Ex. F), Prudential Insurance (Ex. G) and in the course of arguments also referred to National Insurance, Oriental and Hindusthan Insurance companies. As observed above, Oriental, Hindusthan and Prudential (which is a foreign company) are companies of long standing and cannot be treated as parallel instances in the determination of the points. There is moreover sufficient data on the record pertaining to no less than 11 more companies which were also bracketed with this company namely Insurance of India Ltd., for the purpose of adjudication presumably on the asking of the Union. The demands of the Union as formulated in the chart were also sought to be uniform in the case of these one dozen companies. Consequently the other eleven companies would form a better parallel for the purpose of comparison in the determination of the issues. Of these eleven companies No. 11/51 (New India Assurance Company Ltd.), No. 14/51 (Calcutta Insurance Company Ltd.), No. 17/51 (United India Life Assurance Company Ltd.), No. 19/51 (All India General Insurance Company Ltd.) and No. 21/51 (India Equitable Insurance Company Ltd.) have composed their differences with their employees out of court and the Employees Union withdrew their claims. There is accordingly no data regarding these companies in this office. Five more companies namely No. 10/51 (National Fire and General Insurance Company), No. 12/51 (National Indian Life Insurance Company Ltd.), No. 13/51 (National Insurance Co. Ltd.), No. 18/51 (Rajasthan Insurance Company Ltd.) and No. 20/51 (East India Insurance Company Ltd.), came to amicable settlement and regular deeds of settlements were brought on the record and the same were implemented in the award and these can safely form a useful data for the sake of comparison. Now in the case of National Fire and General Insurance (10/51) and National Insurance Co. Ltd. (13/51) the starting pay of the clerical staff has been raised to Rs. 70 and an increase of Rs. 5 at a flat rate has been made in the salary. Regarding National Indian Life Insurance Co. Ltd. (12/51) a flat rate of increment of Rs. 5 per mensem in the basic salary has been given to all clerical staff. Similarly in the East India Insurance Co. Ltd. (12/51) an *ad hoc* increment of Rs. 5 has been allowed to all clerks. In the case of the Rajasthan Insurance Company Ltd. (18/51) increase has been made in the scales according to the classification of the employees and so far office Assistants are concerned the scale agreed upon is as follows:

Rs. 60—5—85—6—115—7—150.

It is noteworthy that in the case of the aforesaid companies the Insurance Office Employees Association of Bengal was a party to the agreement and strangely enough they press now for a scale of Rs. 110 and Rs. 160 to start with in the case of this company. I would therefore consider this company also on the lines of other companies under reference. Some material relating to all the insurance

companies is available from the Indian Insurance Year Book 1951 and that information furnishes data for the purpose of scrutiny into the financial position of each company but I think it would not be safe to work upon this material solely for finding out a parallel case for drawing scales of pay for Insurance of India Ltd. Each company has its own difficulties and in the world of competition it is very difficult to lay down any hard and fast rule simply on the assumption that the rates of dividend or expense ratio have a near approach to one another.

Accordingly, taking a broad view of the financial position of this company I hold that the clerical staff shall get an *ad hoc* increment of Rs. 5 in their salary and the sub staff of Rs. 3 from 1st January 1952 and the following scales are framed for the clerical staff and the sub staff:

Clerical Staff: Rs. 65—5—90—6—120—7—155.

Sub Staff: Rs. 25—3—40—2—50—1—55.

These scales however shall be enforced from the date when the award becomes operative and the existing staff will be fitted at the next stage of their scale of salary they are drawing now, of course after including the increment of Rs. 5 and Rs. 3 respectively allowed above in the scales introduced by this award.

Dearness Allowance.—The case of the Union is that taking the year 1946 as the base year the employees are entitled to dearness allowance at the rate of $1\frac{1}{2}$ per cent. of the salary for every one point rise in the cost of living index subject to a minimum of Rs. 50. It was also claimed that the adjustment in the dearness allowance should be made after every six months. The Company explained in reply that they are paying Rs. 35 as a flat rate of dearness allowance and this compares favourably with the dearness allowance paid by other insurance companies whose premium income is much higher than this company. The Employees Union cited the instances of Bombay Mutual Life Assurance (Ex. F) as an instance and their representative argued that the amount of Dearness Allowance should be atleast Rs. 50 per month for one drawing Rs. 100 and Rs. 50 plus 10 per cent. excess for those drawing over Rs. 100 and for the sub staff Rs. 45 per month. Reference was also made to Bengal Chamber of Commerce who have tabulated the rise in the dearness allowance with a ten point slab rise. On the other hand Shri Banerjee arguing on behalf of the employer referred to the amount of dearness allowance paid by Oriental and Hindusthan which are bigger companies and relied upon the statistics given in Ex. 14. In the case of Oriental as borne out from this document the employees are getting Rs. 35 to Rs. 70 and in Hindusthan Rs. 40 to Rs. 75 as dearness allowance. The cost of living index also has good bearing upon the question and the only evidence brought on the record is Ex. 10 which furnishes comparative figures of price index of foodstuff since December 1950. The same appears to have been prepared from 'CAPITAL' an insurance paper and indicates that the price index in December 1950 was 425.6. In June 1951 it was 415.1 and in December 1951 it came down to 397.5. There has been a fall in the year 1951 but it is not clear on the record from the evidence as to when this flat rate of Rs. 35 was fixed by this Company. At the same time there is no sufficient material on the record to apply the formulae adduced by the Employees Union namely, to make an increase at the rate of $1\frac{1}{2}$ per cent. of the salary for every one point rise in the cost of living index. In the case of other companies which were consolidated in this reference in the first instance, increase has been made in the dearness allowance at a flat rate by Rs. 5 only to the clerical staff and Rs. 2 to the sub-staff. In one case namely East India Insurance Company (20/51) an increase of Rs. 3 was agreed upon between the Employees Union and the company in the matter of dearness allowance. The above are cases of agreement and in consideration of the fact that the cost of living is not on the rise although it has gone up since the scale of Rs. 35 was fixed and in view of another fact that City Allowance of Rs. 10 which was paid to the employees when the office of the Insurance of India Ltd. was transferred from Comilla (East Pakistan) to Calcutta has now been absorbed in the dearness allowance [as stated by Shri S. K. Bhattacharjee, Secretary of the Company (EW. 2) in his deposition]. I would allow an increase of Rs. 5 at a flat rate to the clerical staff and Rs. 3 to the sub-staff henceforward.

House Rent.—The demand is for the grant of a house rent of Rs. 15 per mensem minimum to those drawing Rs. 100 with an increase of Rs. 5 to those drawing

above according to the scale given in the statement of claim. The company opposed the demand on the plea that the recruitment of employees is made from the local people and it was also urged that the company is not in a position to grant such concession in the present financial position of expense ratio. The plea of the company with regard to local recruitment was not denied and in my opinion no case has been made out for the grant of house rent. The same is disallowed.

Issue No. (2).—Bonus.—This demand was barely made in the statement of claim that the employees should be given bonus equivalent to three months' salary with allowance per annum. The Company's position in this respect is that they have been allowing bonus of at least 15 days' salary despite financial stringency but now the Insurance Amendment Act has restricted payment of bonus and the same cannot be paid without reference to the Central Government. It was further stated that the present position of expense ratio of the company does not permit any such expense. Shri Sen Gupta arguing on behalf of the Employees Union while referring to the Balance Sheet argued that the company was paying bonus to the policy-holders at decent rate and they can well afford to pay bonus to their employees. The argument obviously is fallacious inasmuch as the bonus paid to the policy-holders stands on a different footing. The question of bonus to be paid to the employees otherwise may be a legitimate demand because it works as an incentive but the real question for determination is as to whether insurance companies can be called upon to pay bonus to their employees on the lines of commercial concerns like banks textile mills and other mercantile firms. The Union Counsel cited the legal precedents of Mahaluxmi Cotton Mills case and others wherein the question has been gone into but the same are beside the point and there was no reply to the restriction imposed under section 31, sub-section (7) of the Insurance Act in the case of payment of bonus without referring the matter to the Central Government. It was stated in the course of argument that the Central Government has issued a circular that no such permission of the Central Government is necessary when the bonus to be paid does not exceed the amount equivalent to two months' salary. This circular was not produced nor I have been able to come across and as such I have no mind to circumvent the statutory provision in the matter of bonus. I would only recommend that the employer should move the Central Government for the payment of at least 15 days' bonus which they have been paying to the employees in promotion of harmonious relations between their employees and the company.

Issue No. (3).—Provident fund or pension, gratuity, staff insurance.—The scheme of Provident Fund is already in force and the demand of the employees is that deduction of 10 per cent. of the annual salary should be made in 12 months as the contribution of the employees to the Provident Fund and the employers share of contribution should be equal to that amount. It was also claimed that 50 per cent. of the trustees be elected as representatives of the employees. It may be stated at the outset that the latter part of the demand was not pressed. The company has filed a copy of the rules of the Provident Fund wherefrom it would be found that 6½ per cent. of the employees' salary is being deducted and the company is making equal contribution towards Provident Fund. No instance was cited of the increased percentage of deduction by the other side but I have come across with instances in some insurance companies where 8-1/3 per cent. deduction is made. In view of the status of this company and in the absence of any cogent evidence I don't think any case has been made out for increased deduction and the present practice which appears to be the general practice with majority of insurance companies the deduction of 6½ per cent. is fair and reasonable and shall stand. The claim is accordingly disallowed.

Pension was treated as an alternative to other benefits and was not pressed.

Gratuity.—This retiring benefit was opposed by the company mainly on the plea that Provident Fund scheme is already in force and that the expense ratio of the company does not allow any more loading. The first contention is devoid of any substance inasmuch as gratuity has been allowed by this Tribunal in more than one Insurance Companies in addition to the Provident Fund scheme. Provident Fund scheme is no bar in the grant of gratuity as observed by the Labour Appellate Tribunal recently if the company has the capacity to bear the burden of the same. Shri Banerjee, the learned Counsel of the company, of course, filed a statement in the course of arguments wherein it has been shown that if this retiring benefit is introduced it would affect the expense ratio by 4.6 per cent.

and the company shall have to set apart an amount of Rs. 20,000. It was contended that the company is still in infancy and if the expenditure is loaded from all sides it would seriously prejudice the future progress of the institution.

The ground alleged however appears to be far fetched and has no relation with the present position of the company. Gratuity is a retiring benefit and on the examination of Ex. 20 I find that with the exception of three employees detailed at Nos. 1, 2 and 3 of Ex. 20 others joined the company's service after 1940 and with the extension of retiring age from 55 to 60 years of service. I don't think there is any near contingency for retirement of any of the employees of this company. Death of course is an unforeseen contingency but I don't think that the plea advanced on behalf of the company viz., 'that in case of gratuity scheme being introduced they would require several thousands to set apart for that' has no force. The payment of gratuity if an occasion arises does not make a call of any large amount and naturally shall cover a long period and with the introduction of gratuity scheme a provision can be made in the adjustment of expenses. This retiring benefit has been fairly recognized now and some other companies, who have arrived at amicable settlement with their employees, have also agreed to introduce the scheme of gratuity in addition to one of Provident Fund. For all these reasons, I would allow this demand and gratuity will be paid to the clerical staff and sub-staff in future on the terms and conditions as mentioned below:

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| (1) On the death of employee while in service of the company. | One month's basic salary for each year of continuous service subject to a maximum of 15 months' basic salary. |
| (2) On retirement from service after completion of 15 years continuous service. | Fifteen months' basic salary. |
| (3) On termination of service by the company except on grounds of gross negligence of duty, misconduct and fraud. | One month's basic salary for each completed year of service but not more than 15 months' basic salary. |

Of course no employee will be entitled to gratuity for the period less than 5 years' service. The salary for the purpose of calculating gratuity shall be the average basic salary during the 12 months next previous to death, retirement or termination of service as the case may be.

Staff insurance.—The demand is for a free insurance policy up to the amount of Rs. 3,000 for all employees irrespective of grade or status. The company already allows the rebate of 4 per cent. of the tabular rates of premium on policies on the lives of the employees. The employees are furthermore given facilities in the matter of payment of premium without any extra charge as is usually charged in other cases. No instance was cited for the grant of a free insurance policy to all the employees. The demand appears to be extravagant and the same is disallowed.

Issue No. (4).—Hours of work.—The demand was argued half-heartedly and was not seriously pressed. The prevailing practice so far working hours are concerned shall be observed.

Issue No. (5).—Leave—casual, privilege and medical.—The company has filed a copy of the Leave Rules (Ex. 7). It is a detailed document comprising over 40 clauses and covers all aspects of leave. The grievance of the Union with regard to leave as detailed in the charter of demand relates to privilege, casual as well as medical leave. They also ask for special leave to be granted to the authorised representatives of the Union for attendance in the Tribunal when so required or any conference held in the interest of trade unionism. The company in their written statement did not deem it necessary to touch each and every feature of the demand and only stated that the facility for leave allowed to the employees as borne out from leave rules is quite fair and reasonable. Under Rule 10 (Ex. 7) it is provided that after completion of 12 months' service from the date of confirmation an employee permanently employed will be allowed 30 days' privilege leave

with full pay. The Union also in the charter of demand has asked for one month's privilege leave in a calendar year. The demand accordingly is meaningless. In the matter of Casual Leave of course the demand is for 15 days in a year and the leave rules allow 10 days' leave in a calendar year with full pay. Some of the companies have agreed to grant 15 days' casual leave in a year. But no decided case has been cited wherein 15 days' casual leave has been allowed in any commercial concern. I don't think any charge is called for in the case of an insurance company. Grievance about medical leave also has no substance and the existing rules regarding medical leave appear to be satisfactory. So far special leave asked for is concerned it appears that the Union has felt some difficulty in the grant of leave for attendance in the Tribunal or conferences. What I have noticed generally is that the Union representatives are invariably treated on duty when they attend the proceedings before a Tribunal and the question of leave does not arise. I don't think the practice is otherwise with the Insurance of India. At any rate the company has not joined issue in the written statement nor it was opposed in the course of arguments and reliance was only made on the Leave Rules. In the circumstances it would be understood that the Union representatives are treated on duty when they happen to attend the proceedings of the Tribunal. With regard to their attendance in conferences it is difficult to lay down any rule in the absence of any specification of days in the demand for this purpose. The employees moreover have casual leave, earned leave to avail of at their disposal and I see no good reason to allow any such special leave for the attendance of conferences.

Issue No. (6).—Retirement age.—The company agrees to the extension of retiring age to 60 years in lieu of 55. Awarded accordingly.

Issue No. (7).—Security of Service.—This point was not posed for discussion on the assurance of the company that no one has been discharged without having been charge-sheeted or having been given the opportunity of explanation. It was stated on behalf of the employers that there has been no grievance on that account and no case has been cited wherein any employee was treated otherwise. The Union did not ask for any specific measure for security of service and the point needs no adjudication.

Issue No. (8).—Overtime payment.—The company's position in regard to this demand is that necessity for overtime work hardly arises if proper service is rendered during office hours. They however did not oppose for payment of overtime if it is taken out from the staff. The Union in their demand has asked for the payment of overtime remuneration at the rate of double of the usual for one hour or part thereof. But no evidence was led nor instance was cited in support of that. My finding accordingly would be that overtime shall be paid if the employees are called upon to work after office hours or on Sundays or holidays at least on the usual remuneration.

Issue No. (9).—Free mid-day tiffin.—The company opposed this demand and their Counsel submitted that it is unheard of by this time. Shri Sen Gupta on behalf of the Union cited an instance of one company where the employees are given free tea only. The idea does not appeal to me as a dignified one to ask for such concession, and I decline to act upon the instance cited by the Union representative.

Issue No. (10).—Provision for Tiffin Room, Library and other similar amenities.—It is not disputed that the premises of the building where the company is located are not spacious and the accommodation is rather cramped. The provision asked for tiffin room, library etc. is therefore not justified. Shri Banerjee, Counsel for the company, however, has stated that the new building for the company is under construction and the demand of the Union for some accommodation shall be taken into account. In view of this assurance the demand was not pressed.

Issue No. (11).—Medical aid.—The claim in this respect is that free medical aid should be afforded to all employees of the company including their family. The employer has treated the demand as a fantastic one and Shri Banerjee contended that such arrangement has never been made either in Government offices or in commercial concerns. The financial inability and the statutory restriction was also pleaded. It was, however, admitted that the company has medical officers and

the employees can consult them during office hours free of charge. This latitude of free consultation during office hours appears to be of not much value because the demand exactly is when one is on sick bed and requires medical aid. The demand has my sympathy but no instance has been cited wherein any commercial concern has agreed to provide medical aid at the houses of their employees much less in family troubles. The demand is negatived.

Now, therefore, this Tribunal makes its Award in terms aforesaid this the 15th day of January 1953.

K. S. CAMPBELL-PURI, *Chairman*,
Central Government Industrial Tribunal,
Calcutta.

[No. LR-90(120.)]

P. S. EASWARAN, Under Secy.

